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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/532,791	03/22/2000	Takenori Goto	000350	8585

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EXAMINER

NGUYEN, TUAN M

ART UNIT PAPER NUMBER

2828

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/532,791

Applicant(s)

GOTO ET AL. 

Examiner

Tuan M Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.


- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

  
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**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-9 and 11-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Ueki ('893).

With respect to claims 1 and 11, Ueki shows in figure 9(a) a first semiconductor layer including an active layer (34), a striped second semiconductor layer formed on first semiconductor layer and a current blocking layers (36, 43) formed on said first semiconductor layer on both sides of said second semiconductor layer; second semiconductor layer including a cladding layer which comprises a lower layer having a first width at its lower end and an upper layer having a second width larger than said first width at its lower end, both of said lower layer and upper layer having a larger band gap than that of said active layer, note col. 12 line 27 to col. 16 line 65, see fig 9(a).

With respect to claim 2, Ueki shows in figure 9(a) the cladding layer (36) has the function of confining light in said active layer.

With respect to claims 3-6 Ueki shows in figure 9(a) a third semiconductor layers (38) formed on cladding layer and having a carrier concentration which is not less than that of said cladding layer, a contact layer (39), note col. 13, see fig. 9(a).

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With respect to claims 7-9, Ueki shows in figures 9(a) to 18 a lower layer and upper layer having a first width and second width and second semiconductor layer comprises a second cladding layer of a second conductivity type as said cladding layer.

With respect to claims 12 and 20, Ueki shows in figures 1-24 the step of forming the second semiconductor layered and the current blocking layer on the first semiconductor layer, the striped opening, the cladding layer comprises the step of forming lower layer and upper layer having first width and second width, note col. 10 line 40 to col. 18 line 55.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueki ('893) in view of Thornton ('681).

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With respect to claim 10 and 21, Ueki discloses the first and second semiconductor, and current blocking layer containing at least one of boron, thallium, gallium, aluminum and indium, note col. 10 line 39 to col. 18 line 54, see figs 9(a) to 24. However Ueki does not disclose the first, second semiconductor layer and the current blocking layer is a nitride. Whereas Thornton discloses the semiconductor structure having the nitride deposited over entire based semiconductor layers, note col. 6, see figs 3-5. For the benefit of surface emitting semiconductor laser, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Ueki with the semiconductor layer is the nitride base as taught or suggested by Thornton.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

#### **Citation Of The Pertinent References**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patent to Wipiejewski (US patent 6,317,446) discloses vertical resonator laser diode and method for producing it.

The patent to Fujii (US patent 5,822,348) discloses semiconductor laser.

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***Communication Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan M Nguyen whose telephone number is (703) 306-0247. The examiner can normally be reached on 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (703) 308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3329.



Paul Ip  
SPE  
Art unit 2828

TMN  
March 24, 2003